
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0729.1/08 ROUGH DRAFT

ATTY/TYPIST: BP:ean

BRIEF DESCRIPTION: Concerning the management of funds held by
nonprofit institutions.

1 AN ACT Relating to the management of funds held by nonprofit
2 institutions; adding a new chapter to Title 24 RCW; and repealing RCW
3 24.44.010, 24.44.020, 24.44.030, 24.44.040, 24.44.050, 24.44.060,
4 24.44.070, 24.44.080, 24.44.090, and 24.44.900.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** SHORT TITLE. This act may be known and
7 cited as the uniform prudent management of institutional funds act.

8 NEW SECTION. **Sec. 2.** DEFINITIONS. In this chapter:

9 (1) "Charitable purpose" means the relief of poverty, the
10 advancement of education or religion, the promotion of health, the
11 promotion of a governmental purpose, or any other purpose the
12 achievement of which is beneficial to the community.

13 (2) "Endowment fund" means an institutional fund or part thereof
14 that, under the terms of a gift instrument, is not wholly expendable by
15 the institution on a current basis. "Endowment fund" does not include
16 assets that an institution designates as an endowment fund for its own
17 use.

1 (3) "Gift instrument" means a record or records, including an
2 institutional solicitation, under which property is granted to,
3 transferred to, or held by an institution as an institutional fund.

4 (4) "Institution" means:

5 (a) A person, other than an individual, organized and operated
6 exclusively for charitable purposes;

7 (b) A government or governmental subdivision, agency, or
8 instrumentality, to the extent that it holds funds exclusively for a
9 charitable purpose; and

10 (c) A trust that had both charitable and noncharitable interests,
11 after all noncharitable interests have terminated.

12 (5) "Institutional fund" means a fund held by an institution
13 exclusively for charitable purposes. "Institutional fund" does not
14 include:

15 (a) Program-related assets;

16 (b) A fund held for an institution by a trustee that is not an
17 institution; or

18 (c) A fund in which a beneficiary that is not an institution has an
19 interest, other than an interest that could arise upon violation or
20 failure of the purposes of the fund.

21 (6) "Person" means an individual, corporation, business trust,
22 estate, trust, partnership, limited liability company, association,
23 joint venture, public corporation, government or governmental
24 subdivision, agency, or instrumentality, or any other legal or
25 commercial entity.

26 (7) "Program-related asset" means an asset held by an institution
27 primarily to accomplish a charitable purpose of the institution and not
28 primarily for investment.

29 (8) "Record" means information that is inscribed on a tangible
30 medium or that is stored in an electronic or other medium and is
31 retrievable in perceivable form.

32 NEW SECTION. **Sec. 3.** STANDARD OF CONDUCT IN MANAGING AND
33 INVESTING INSTITUTIONAL FUND. (1) Subject to the intent of a donor
34 expressed in a gift instrument, an institution, in managing and
35 investing an institutional fund, shall consider the charitable purposes
36 of the institution and the purposes of the institutional fund.

1 (2) In addition to complying with the duty of loyalty imposed by
2 law other than this chapter, each person responsible for managing and
3 investing an institutional fund shall manage and invest the fund in
4 good faith and with the care an ordinarily prudent person in a like
5 position would exercise under similar circumstances.

6 (3) In managing and investing an institutional fund, an
7 institution:

8 (a) May incur only costs that are appropriate and reasonable in
9 relation to the assets, the purposes of the institution, and the skills
10 available to the institution; and

11 (b) Shall make a reasonable effort to verify facts relevant to the
12 management and investment of the fund.

13 (4) An institution may pool two or more institutional funds for
14 purposes of management and investment.

15 (5) Except as otherwise provided by a gift instrument, the
16 following rules apply:

17 (a) In managing and investing an institutional fund, the following
18 factors, if relevant, must be considered:

19 (i) General economic conditions;

20 (ii) The possible effect of inflation or deflation;

21 (iii) The expected tax consequences, if any, of investment
22 decisions or strategies;

23 (iv) The role that each investment or course of action plays within
24 the overall investment portfolio of the fund;

25 (v) The expected total return from income and the appreciation of
26 investments;

27 (vi) Other resources of the institution;

28 (vii) The needs of the institution and the institutional fund to
29 make distributions and to preserve capital; and

30 (viii) An asset's special relationship or special value, if any, to
31 the charitable purposes of the institution.

32 (b) Management and investment decisions about an individual asset
33 must be made not in isolation but rather in the context of the
34 institutional fund's portfolio of investments as a whole and as a part
35 of an overall investment strategy having risk and return objectives
36 reasonably suited to the institutional fund and to the institution.

37 (c) Except as otherwise provided by law, an institution may invest

1 in any kind of property or type of investment consistent with this
2 section.

3 (d) An institution shall diversify the investments of an
4 institutional fund unless the institution reasonably determines that,
5 because of special circumstances, the purposes of the fund are better
6 served without diversification.

7 (e) Within a reasonable time after receiving property, an
8 institution shall make and carry out decisions concerning the retention
9 or disposition of the property or to rebalance a portfolio, in order to
10 bring the institutional fund into compliance with the purposes, terms,
11 and distribution requirements of the institution as necessary to meet
12 other circumstances of the institution and the requirements of this
13 chapter.

14 (f) A person that has special skills or expertise, or is selected
15 in reliance upon the person's representation that the person has
16 special skills or expertise, has a duty to use those skills or that
17 expertise in managing and investing institutional funds.

18 NEW SECTION. **Sec. 4.** APPROPRIATION FOR EXPENDITURE OR
19 ACCUMULATION OF ENDOWMENT FUND--RULES OF CONSTRUCTION. (1) Subject to
20 the intent of a donor expressed in the gift instrument and to
21 subsection (4) of this section, an institution may appropriate for
22 expenditure or accumulate so much of an endowment fund as the
23 institution determines is prudent for the uses, benefits, purposes, and
24 duration for which the endowment fund is established. Unless stated
25 otherwise in the gift instrument, the assets in an endowment fund are
26 donor-restricted assets until appropriated for expenditure by the
27 institution. In making a determination to appropriate or accumulate,
28 the institution shall act in good faith, with the care that an
29 ordinarily prudent person in a like position would exercise under
30 similar circumstances, and shall consider, if relevant, the following
31 factors:

- 32 (a) The duration and preservation of the endowment fund;
33 (b) The purposes of the institution and the endowment fund;
34 (c) General economic conditions;
35 (d) The possible effect of inflation or deflation;
36 (e) The expected total return from income and the appreciation of
37 investments;

(f) Other resources of the institution; and

(g) The investment policy of the institution.

(2) To limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section, a gift instrument must specifically state the limitation.

(3) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

(a) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(b) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section.

(4) The appropriation for expenditure in any year of an amount greater than seven percent of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than three years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(a) Apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument; or

(b) Create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to seven percent of the fair market value of the endowment fund.

NEW SECTION. **Sec. 5.** DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS. (1) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(a) Selecting an agent;

1 (b) Establishing the scope and terms of the delegation, consistent
2 with the purposes of the institution and the institutional fund; and

3 (c) Periodically reviewing the agent's actions in order to monitor
4 the agent's performance and compliance with the scope and terms of the
5 delegation.

6 (2) In performing a delegated function, an agent owes a duty to the
7 institution to exercise reasonable care to comply with the scope and
8 terms of the delegation.

9 (3) An institution that complies with subsection (1) of this
10 section is not liable for the decisions or actions of an agent to which
11 the function was delegated.

12 (4) By accepting delegation of a management or investment function
13 from an institution that is subject to the laws of this state, an agent
14 submits to the jurisdiction of the courts of this state in all
15 proceedings arising from or related to the delegation or the
16 performance of the delegated function.

17 (5) An institution may delegate management and investment functions
18 to its committees, officers, or employees as authorized by law.

19 NEW SECTION. Sec. 6. RELEASE OR MODIFICATION OF RESTRICTIONS ON
20 MANAGEMENT, INVESTMENT, OR PURPOSE. (1) If the donor consents in a
21 record, an institution may release or modify, in whole or in part, a
22 restriction contained in a gift instrument on the management,
23 investment, or purpose of an institutional fund. A release or
24 modification may not allow a fund to be used for a purpose other than
25 a charitable purpose of the institution.

26 (2) The court, upon application of an institution, may modify a
27 restriction contained in a gift instrument regarding the management or
28 investment of an institutional fund if the restriction has become
29 impracticable or wasteful, if it impairs the management or investment
30 of the fund, or if, because of circumstances not anticipated by the
31 donor, a modification of a restriction will further the purposes of the
32 fund. The institution shall notify the attorney general of the
33 application, and the attorney general must be given an opportunity to
34 be heard. To the extent practicable, any modification must be made in
35 accordance with the donor's probable intention.

36 (3) If a particular charitable purpose or a restriction contained
37 in a gift instrument on the use of an institutional fund becomes

1 unlawful, impracticable, impossible to achieve, or wasteful, the court,
2 upon application of an institution, may modify the purpose of the fund
3 or the restriction on the use of the fund in a manner consistent with
4 the charitable purposes expressed in the gift instrument. The
5 institution shall notify the attorney general of the application, and
6 the attorney general must be given an opportunity to be heard.

7 (4) If an institution determines that a restriction contained in a
8 gift instrument on the management, investment, or purpose of an
9 institutional fund is unlawful, impracticable, impossible to achieve,
10 or wasteful, the institution, . . . days after notification to the
11 attorney general, may release or modify the restriction, in whole or
12 part, if:

13 (a) The institutional fund subject to the restriction has a total
14 value of less than dollars;

15 (b) More than . . . years have elapsed since the fund was
16 established; and

17 (c) The institution uses the property in a manner consistent with
18 the charitable purposes expressed in the gift instrument.

19 NEW SECTION. **Sec. 7.** REVIEWING COMPLIANCE. Compliance with this
20 chapter is determined in light of the facts and circumstances existing
21 at the time a decision is made or action is taken, and not by
22 hindsight.

23 NEW SECTION. **Sec. 8.** APPLICATION TO EXISTING INSTITUTIONAL FUNDS.
24 This chapter applies to institutional funds existing on or established
25 after the effective date of this act. As applied to institutional
26 funds existing on the effective date of this act, this chapter governs
27 only decisions made or actions taken on or after the effective date of
28 this act.

29 NEW SECTION. **Sec. 9.** RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
30 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and
31 supersedes the electronic signatures in global and national commerce
32 act (15 U.S.C. Sec. 7001 et seq.), but does not modify, limit, or
33 supersede 15 U.S.C. Sec. 7001(a), or authorize electronic delivery of
34 any of the notices described in 15 U.S.C. Sec. 7003(b).

1 NEW SECTION. **Sec. 10.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.

2 In applying and construing this uniform act, consideration must be
3 given to the need to promote uniformity of the law with respect to its
4 subject matter among states that enact it.

5 NEW SECTION. **Sec. 11.** CAPTIONS NOT LAW. Captions used in this

6 act are not any part of the law.

7 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act

8 constitute a new chapter in Title 24 RCW.

9 NEW SECTION. **Sec. 13.** The following acts or parts of acts are

10 each repealed:

11 (1) RCW 24.44.010 (Definitions) and 1973 c 17 s 1;

12 (2) RCW 24.44.020 (Appropriation of appreciation) and 1973 c 17 s
13 2;

14 (3) RCW 24.44.030 (Investment authority) and 1973 c 17 s 3;

15 (4) RCW 24.44.040 (Delegation of investment management) and 1973 c
16 17 s 4;

17 (5) RCW 24.44.050 (Standard of conduct) and 1973 c 17 s 5;

18 (6) RCW 24.44.060 (Release of restrictions on use or investments)
19 and 1973 c 17 s 6;

20 (7) RCW 24.44.070 (Uniformity of application and construction) and
21 1973 c 17 s 8;

22 (8) RCW 24.44.080 (Short title) and 1973 c 17 s 9;

23 (9) RCW 24.44.090 (Section headings) and 1973 c 17 s 10; and

24 (10) RCW 24.44.900 (Severability--1973 c 17) and 1973 c 17 s 7.

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